

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

JAMAICA IMANI-NELSON, an individual;  
and JASON NELSON, an individual,

Plaintiffs,

v.

EMPOWERMENT CLINIC INC., an Oregon  
nonprofit corporation; and MICHAEL  
BRAXTON, an individual,

Defendants.

Case No.

**COMPLAINT (ORS 652.200 - Failure to  
Pay Wages; ORS 653.261 - Failure to Pay  
Overtime Wages; ORS 652.150 - Failure to  
Pay Wages on Termination of Employment)**

**PRAYER: \$323,770.00  
FEE AUTHORITY: ORS 21.160(1)(c)**

**NOT SUBJECT TO MANDATORY  
ARBITRATION**

For their complaint against Defendants Empowerment Clinic Inc. (“ECI”) and Michael  
Braxton (“Braxton”) Plaintiffs Jamaica Imani-Nelson (“Ms. Imani-Nelson”) and Jason Nelson  
 (“Mr. Nelson”) allege as follows:

**PARTIES/VENUE**

1.

Ms. Imani-Nelson is a resident of Portland, Multnomah County, Oregon.

2.

Mr. Nelson is a resident of Portland, Multnomah County, Oregon.

3.

Defendant ECI is an Oregon nonprofit corporation with its principal place of business in  
Portland, Multnomah County, Oregon.

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1 4.

2 Defendant Braxton is an individual residing in Portland, Washington County, Oregon.

3 5.

4 At all material times, Defendant Braxton supervised Plaintiffs' work.

5 6.

6 Venue is appropriate in Multnomah County because Defendant ECI has an office for the  
7 transaction of business in Multnomah County, conducts regular and sustained business activities  
8 in Multnomah County, and much of the alleged wrongful conduct giving rise to the causes of  
9 action in this case took place in Multnomah County.

10 **FACTS**

11 **Plaintiff Jason Nelson**

12 7.

13 Defendants hired Mr. Nelson on or about February 2016 as a Certified Recovery Mentor  
14 and DUII Facilitator/Counselor. Mr. Nelson was not paid any compensation for his work from  
15 February 2016 to September 2016 because Defendants erroneously classified him as an "intern."

16 8.

17 Mr. Nelson ran DUII groups, performed individual counseling and group counseling  
18 without any supervision. He also attended mandatory staff meetings,

19 9.

20 From February 2016 through September 2016, Mr. Nelson worked as a misclassified  
21 intern/trainee for the benefit of Defendants for an average of 70-80 hours per week. His work for  
22 Defendants was not educational and he performed the same work as paid workers for  
23 Defendants.

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10.

Defendants owed Mr. Nelson \$17 per hour of regular work and \$25.50 for all hours worked he over 40 in a week. Defendants failed to pay Mr. Nelson any wages from February 2016 through July 2017 due to his misclassification as an intern.

11.

On or about September 2016, Defendants hired Mr. Nelson as alcohol and drug counselor and recovery mentor, but none of his duties changed from when he was classified as an intern/trainee.

12.

Mr. Nelson was misclassified as an independent contractor. Defendants required his attendance at mandatory staff meetings and weekly trainings, directed his work, purchased his business cards, provided and furnished his office at ECI, provided his equipment, inspected his work, and insured his work.

13.

From September 2016 through August 28, 2017, Mr. Nelson demonstrated a hard work ethic and worked for the benefit of Defendants for an average of 70-80 hours per week.

14.

Defendants owe Mr. Nelson Jason \$17 per hour of regular work and \$25.50 for all hours worked he over 40 in a week. Defendants did not pay Mr. Nelson all wages due for his hours.

15.

As a result of his misclassification as an independent contractor, Mr. Nelson was underpaid for his regular hours and Defendants failed to pay overtime for hours he worked for Defendants' benefit in excess of 40 hours per week.

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**Plaintiff Jamaica Imani-Nelson**

16.

On or about June 16, 2016, Defendants hired Ms. Imani-Nelson as an as alcohol and drug counselor and recovery mentor. Defendants erroneously classified her as an independent contractor.

17.

Defendant paid wages to Ms. Imani-Nelson personally.

18.

Defendants required her attendance at mandatory staff meetings and weekly trainings, directed her work, purchased her business cards, provided and furnished her office at ECI, provided her equipment, inspected her work, and insured her work.

19.

From June 2016 through July 2, 2017, Ms. Imani-Nelson demonstrated a hard work ethic and worked for the benefit of Defendants for an average of 70-90 hours per week.

20.

Defendants owed Ms. Imani-Nelson \$18.50 per hour of regular work and \$27.75 for all hours worked she over 40 in a week. Defendants did not pay Ms. Imani-Nelson all wages due for her hours.

21.

As a result of her misclassification as an independent contractor, Ms. Imani-Nelson was underpaid for her regular hours and Defendants failed to pay overtime for hours she worked for Defendants' benefit in excess of 40 hours per week.

22.

Plaintiffs' attorney sent a letter dated November 26, 2017 to Defendants' attorney Micah Fargey, demanding wages and penalties owed and providing reasonable notice that Plaintiffs will seeks costs and attorney fees for unpaid wages.

**FIRST CLAIM FOR RELIEF**  
**(ORS 652.200 - Failure to Pay Wages)**  
**(On behalf of Plaintiff Jason Nelson)**  
**(Against all Defendants)**

23.

Mr. Nelson realleges and incorporates paragraphs 1 through 22 as though fully set forth herein.

24.

Defendants willfully failed to compensate Mr. Nelson for all hours he worked for the benefit of Defendants.

25.

On November 26, 2017, before filing this action, Mr. Nelson's attorney gave Defendants reasonable written notice of Mr. Nelson's wage claim.

26.

Mr. Nelson requests payment of said wages and imposition of penalty wages on Defendants for the maximum thirty (30) day period provided by ORS 652.150 in the amount of \$4,400 or upon proof at the time of trial.

27.

Mr. Nelson is entitled to recover her costs and attorney fees pursuant to ORS 652.200.

**SECOND CLAIM FOR RELIEF**  
**(ORS 652.200 - Failure to Pay Wages)**  
**(On behalf of Plaintiff Jamaica Imani-Nelson)**  
**(Against all Defendants)**

28.

Ms. Imani-Nelson realleges and incorporates paragraphs 1 through 27 as though fully set forth herein.

29.

Defendants willfully failed to compensate Ms. Imani-Nelson for all hours she worked for the benefit of Defendants.

30.

On November 26, 2017, before filing this action, Ms. Imani-Nelson's attorney gave Defendants reasonable written notice of Ms. Imani-Nelson's wage claim.

31.

Ms. Imani-Nelson requests payment of said wages and imposition of penalty wages on Defendants for the maximum thirty (30) day period provided by ORS 652.150 in the amount of \$4,400, or upon proof at the time of trial.

32.

Ms. Imani-Nelson is entitled to recover her costs and attorney fees pursuant to ORS 652.200.

### **THIRD CLAIM FOR RELIEF**

**(ORS 653.261 - Failure to Pay Overtime Wages)**

**(On behalf of Plaintiff Jason Nelson)**

**(Against all Defendants)**

33.

Mr. Nelson realleges and incorporates paragraphs 1 through 32 as though fully set forth herein.

34.

In or about February 2016 through August 28, 2017, Mr. Nelson worked overtime hours for the benefit of Defendants.

35.

Defendants had actual and/or constructive knowledge of Mr. Nelson's overtime and willfully failed to pay him wages he was due.

1 36.

2 Due to Defendants' willful failure to pay wages, Mr. Nelson is entitled to liquidated  
3 damages in the amount of double his unpaid overtime.

4 37.

5 On November 26, 2017, before filing this action, Mr. Nelson's attorney gave Defendants  
6 reasonable written notice of his wage claim.

7 38.

8 Mr. Nelson is entitled to recover his costs and attorney fees.

9 **FOURTH CLAIM FOR RELIEF**

10 **(ORS 653.261 - Failure to Pay Overtime Wages)**

11 **(On behalf of Plaintiff Jamaica Imani-Nelson)**

12 **(Against all Defendants)**

13 39.

14 Ms. Imani-Nelson realleges and incorporates paragraphs 1 through 38 as though fully set  
15 forth herein.

16 40.

17 On or about June 2016 through July 2, 2017 Ms. Imani-Nelson worked overtime hours  
18 for the benefit of Defendants.

19 41.

20 Defendants had actual and/or constructive knowledge of Ms. Imani-Nelson's overtime  
21 and willfully failed to pay her wages she was due.

22 42.

23 Due to Defendants' willful failure to pay wages, Ms. Imani-Nelson is entitled to  
24 liquidated damages in the amount of double her unpaid overtime.

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1 43.

2 On November 26, 2017, before filing this action, Ms. Imani-Nelson's attorney gave  
3 Defendants reasonable written notice of her wage claim.

4 44.

5 Ms. Imani-Nelson is entitled to recover her costs and attorney fees.

6 **FIFTH CLAIM FOR RELIEF**

7 **(ORS 652.150 - Failure to Pay Wages on Termination of Employment)**

8 **(On behalf of Plaintiff Jason Nelson)**

9 **(Against All Defendants)**

10 45.

11 Mr. Nelson realleges and incorporates paragraphs 1 through 44 as though fully set forth  
12 herein.

13 46.

14 Defendants terminated Mr. Nelson on August 28, 2017.

15 47.

16 Defendants willfully failed to pay Mr. Nelson all wages due and owing by the time  
17 required in ORS 652.140.

18 48.

19 On November 26, 2017, Mr. Nelson's attorney sent a letter to Defendants with an  
20 estimate of wages owed and/or sufficient facts for Defendants to determine what amount was  
21 due.

22 49.

23 Defendants willfully failed to pay Mr. Nelson all wages due and owing within twelve  
24 (12) days of the written notice.

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26 ///



1 50.

2 On November 26, 2017, before filing this action, Mr. Nelson's attorney gave Defendants  
3 reasonable written notice of his wage claim.

4 51.

5 Mr. Nelson is entitled to recover her costs and attorney fees.

6 **SIXTH CLAIM FOR RELIEF**

7 **(ORS 652.150 - Failure to Pay Wages on Termination of Employment)**

8 **(On behalf of Plaintiff Jamaica Imani-Nelson)**

9 **(Against All Defendants)**

10 52.

11 Ms. Imani-Nelson realleges and incorporates paragraphs 1 through 51 as though fully set  
12 forth herein.

13 53.

14 Defendants terminated Ms. Imani-Nelson on September 28, 2017.

15 54.

16 Defendants willfully failed to pay Ms. Imani-Nelson all wages due and owing by the time  
17 required in ORS 652.140.

18 55.

19 On November 26, 2017, Ms. Imani-Nelson's attorney sent a letter to Defendants with an  
20 estimate of wages owed and/or sufficient facts for Defendants to determine what amount was  
21 due.

22 56.

23 Defendants willfully failed to pay Ms. Imani-Nelson all wages due and owing within  
24 twelve (12) days of the written notice.

25 ///

26 ///

57.

On November 26, 2017, before filing this action, Ms. Imani-Nelson's attorney gave Defendants reasonable written notice of her wage claim.

58.

Ms. Imani-Nelson is entitled to recover her costs and attorney fees.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request the court to:

1. Assume jurisdiction over each of the causes set forth herein.
2. Issue a declaration that Defendants have violated Plaintiffs' legally protected rights and an order requiring Defendants to correct this deficiency.
3. Grant a permanent injunction enjoining Defendants, their owners, officers, management personnel, employees, agents, successors, and assigns, and all persons in active concert or participation with Defendants, from engaging in any employment practice which retaliates against employees who request were exercised or legally protected rights.
4. Order Defendants to create, implement and carry out policies, practices and programs providing for equal employment opportunities which affirmatively eradicate the effects of past and present unlawful employment practices, on such terms as the court may direct.
5. For Mr. Nelson's Claims for Relief, order Defendants to make him whole by compensating him \$23,800 for unpaid wages, \$38,760 for unpaid overtime, \$62,560 for liquidated damages, and \$4,080 for late payment penalties.
6. For Ms. Imani-Nelson's Claims for Relief, order Defendants to make her whole by compensating her \$97,125 for unpaid overtime, \$97,125 for liquidated damages, and \$4,400 for late payment penalties.

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1 7. Award Plaintiffs their costs of suit and reasonable attorney fees, costs and expert witness  
2 fees.

3 8. Order Defendants to pay prejudgment and post judgment interest, as appropriate, on all  
4 amounts due to Plaintiffs as a result of this action.

5  
6 DATED: July 13, 2018.

7 **HKM EMPLOYMENT ATTORNEYS LLP**

8  
9 By: s/ Shemia Fagan

10 Shemia Fagan, OSB No. 093476

11 Email: sfagan@hkm.com

12 Tel: 503-400-7423; Fax: 503-345-0806

13 Attorneys for Plaintiffs Jamaica Imani-Nelson  
14 and Jason Nelson  
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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

JAMAICA IMANI-NELSON, an individual;  
and JASON NELSON, an individual,

Plaintiffs,

v.

EMPOWERMENT CLINIC INC., an Oregon  
nonprofit corporation; and MICHAEL  
BRAXTON, an individual,

Defendants.

Case No. 18CV29761

**ACCEPTANCE OF SERVICE**

**TO: CLERK OF THE COURT  
SHEMIA FAGAN AND HKM EMPLOYMENT ATTORNEYS LLP**

I, Micah Fargey, of attorneys for Defendant Michael Braxton ("Braxton"), state that I am  
duly authorized by Defendant Braxton to accept service of the Summons and Complaint dated  
July 13, 2018, pursuant to ORCP 7D. On July 18, 2018, I accepted service of the same in the  
above-described action on behalf of Defendant Braxton.

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1 I hereby waive any objections to the form of the Summons or the service of the Summons  
2 and Complaint to Defendant Braxton. Defendant Braxton retains all other defenses and  
3 objections to the lawsuit.

4 DATED this 27th day of July, 2018.

6 **FARGEY LAW PC**

7  
8 By: 

Micah Fargey, OSB No. 096814

Email: micah@fargeylaw.com

7307 SW Beveland Street, Suite 200

Portland, OR 97223

Tel: 503-946-9426; Fax: 503-342-8332

Attorneys for Defendants

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

JAMAICA IMANI-NELSON, an individual;  
and JASON NELSON, an individual,

Plaintiffs,

v.

EMPOWERMENT CLINIC INC., an Oregon  
nonprofit corporation; and MICHAEL  
BRAXTON, an individual,

Defendants.

Case No. 18CV29761

**ACCEPTANCE OF SERVICE**

**TO: CLERK OF THE COURT  
SHEMIA FAGAN AND HKM EMPLOYMENT ATTORNEYS LLP**

I, Micah Fargey, of attorneys for Defendant Empowerment Clinic Inc. ("ECI"), state that I am duly authorized by Defendant ECI to accept service of the Summons and Complaint dated July 13, 2018, pursuant to ORCP 7D. On July 27, 2018, I accepted service of the same in the above-described action on behalf of Defendant ECI.

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1 I hereby waive any objections to the form of the Summons or the service of the Summons  
2 and Complaint to Defendant ECI. Defendant ECI retains all other defenses and objections to the  
3 lawsuit.

4 DATED this 21<sup>st</sup> day of July, 2018.

6 **FARGEY LAW PC**

7  
8 By: 

Micah Fargey, OSB No. 096814

Email: micah@fargeylaw.com

7307 SW Beveland Street, Suite 200

Portland, OR 97223

Tel: 503-946-9426; Fax: 503-342-8332

Attorneys for Defendants

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

JAMAICA IMANI-NELSON, an individual;  
and JASON NELSON, an individual,

Plaintiffs,

v.

EMPOWERMENT CLINIC INC., an Oregon  
nonprofit corporation; and MICHAEL  
BRAXTON, an individual,

Defendants.

Case No. 18CV29761

**PLAINTIFFS' NOTICE OF INTENT TO  
MOVE FOR DEFAULT AGAINST  
DEFENDANTS EMPOWERMENT  
CLINIC INC. AND MICHAEL BRAXTON**

TO: Defendants Empowerment Clinic Inc. and Michael Braxton, and their attorney,  
Micah D. Fargey  
Fargey Law PC  
7307 SW Beveland Street, Suite 200  
Portland, OR 97223

PLEASE TAKE NOTICE that pursuant to ORCP 69, Plaintiffs Jamaica Imani-Nelson  
and Jason Nelson, through their attorneys, will move for an Order of Default against Defendants  
Empowerment Clinic Inc. and Michael Braxton on September 7, 2018, for failing to defend  
against Plaintiff's Complaint in this action, filed on July 13, 2018.

DATED: August 28, 2018.

**HKM EMPLOYMENT ATTORNEYS LLP**

By: s/ Shemia Fagan

Shemia Fagan, OSB No. 093476

Email: sfagan@hkm.com

Tel: 503-400-7423; Fax: 503-345-0806

Attorneys for Plaintiffs Jamaica Imani-Nelson  
and Jason Nelson



**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2018 the foregoing was filed with the Clerk of the Court via the Odyssey File & Serve system which will send notification of such filing to the following:

Micah D. Fargey  
micah@fargeylaw.com  
Fargey Law PC  
7307 SW Beveland Street, Suite 200  
Portland, OR 97223  
Telephone: 503-946-9426  
Facsimile: 503-342-8332

Attorneys for Defendants

and by ☒ mailing; ☒ e-mailing; ☐ hand delivery; ☐ facsimile a true and correct copy thereof to said parties on the date stated below.

DATED: August 28, 2018.

s/ Margurite Teresa Weeks

Margurite Teresa Weeks, Legal Assistant  
HKM Employment Attorneys LLP

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH  
1021 SW 4<sup>TH</sup> AVENUE, PORTLAND OR 97204

**Case No:** 18CV29761

**Jamaica Imani-Nelson, Jason Nelson**  
**vs**  
**Empowerment Clinic Inc., Michael**  
**Braxton**

**ORDER APPOINTING JUDGE  
TO CASE**

As provided by the court's rules and policy, the Court finds that the above case has progressed to a point in its process where it is appropriate to appoint a judge for the purpose of hearing pretrial motions in this action.

Now therefore the Court orders that **Thomas M Ryan** is appointed as  
☒ **Motions** ☐ **Foreclosure Panel** judge.

If the judge named above is assigned as a motions judge, the case is assigned to that judge to hear all pretrial motions (excluding Summary Judgment motions), except as further provided by order of the Presiding Judge.

The moving party shall contact the motion judge's chambers to schedule a hearing for any pending motions. The moving party must provide to all parties notice of the time, date, and location set for the hearing, and the name of the judge who will hear the motion. Notice to the parties may be by any means of communication to which the parties mutually have agreed. If there is no agreement as to the means for giving notice, then notice must be given in writing and delivered to each party.

If the judge named above is assigned as a Foreclosure Panel judge, the case is assigned to that judge for all matters.

September 14, 2018  
Date



Stephen K. Bushong, Presiding Judge

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7 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**  
8 **FOR THE COUNTY OF MULTNOMAH**  
9

10 **JAMAICA IMANI-NELSON**, an individual,  
11 and **JASON NELSON**, an individual,

12 Plaintiffs,

13 v.

14 **EMPOWERMENT CLINIC INC.**, an Oregon  
15 nonprofit corporation; and **MICHAEL**  
**BRAXTON**, an individual,

16 Defendants.  
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Case No. 18CV29761

**DEFENDANTS' MOTION TO DISMISS**

ORAL ARGUMENT REQUESTED

1 **I. UTCR 5.050 COMPLIANCE**

2 Counsel for the defendants requests oral argument and anticipates that 30 minutes will be  
3 required. Official court reporting services are requested.

4 **II. MOTIONS**

5 Pursuant to Rule 21 A(8) of the Oregon Rules of Civil Procedure, Defendants move the Court  
6 for an order dismissing the following claims of the Complaint (the "Compl.") filed by plaintiffs Jamaica  
7 Imani-Nelson ("Imani-Nelson") and Jason Nelson ("Nelson") (together "Plaintiffs") on the grounds  
8 listed below:

9 1. The first through sixth causes of action as stated against defendant Michael Braxton  
10 ("Braxton") should be dismissed because he is not an employer subject to liability under any of the  
11 statutes forming the basis of Plaintiffs' claims.

12 2. The third and fourth claim for relief, alleged on behalf of Nelson and Imani-Nelson,  
13 respectively, should be dismissed to the extent they seek recovery of "liquidated damages," for which  
14 there is no basis to recover under any of the statutes referenced in the Complaint. Compl. ¶¶ 36, 42.

15 **III. POINTS AND AUTHORITIES**

16 **A. Plaintiffs' Relevant Factual Allegations**

17 Plaintiffs name both Empowerment Clinic Inc. ("ECI") and Braxton (together "Defendants") as  
18 the defendants in this case. *See* Compl. ¶¶ 3-4. Plaintiffs allege that "ECI is an Oregon nonprofit  
19 corporation with its principal place of business in Portland . . . ." Compl. ¶ 3. Plaintiffs claim Braxton  
20 "supervised Plaintiffs' work." Compl. ¶ 5.

21 Plaintiffs allege that Defendants hired Nelson in February 2016. *See* Compl. ¶ 7. Plaintiffs  
22 allege Nelson was "erroneously classified" as an intern for a significant amount of time he performed  
23 work, and that "Defendants failed to pay" Nelson for "wages . . . due to his misclassification as an  
24 intern." Compl. ¶¶ 7-10. Plaintiffs allege that later "Defendants hired" Plaintiff as an employee but  
25

1 that he "was misclassified as an independent contractor," further causing him to be underpaid (this time  
2 for overtime) as a result of this misclassification. Compl. ¶¶ 11-15.

3 Plaintiffs further allege that "Defendants hired Ms. Imani-Nelson" in June 2016 and  
4 "erroneously classified her as an independent contractor." Compl. ¶ 16. Plaintiffs claim that this  
5 misclassification caused Imani-Nelson to "work[] for the benefit of Defendants for an average of 70-90  
6 hours per week" and was not paid for all of the hours she worked, including overtime for hours she  
7 allegedly worked beyond 40 per week. Compl. ¶¶ 19-21.

8 As a result of Defendants' purported wrongs, Plaintiffs seek unpaid overtime and other wages,  
9 waiting time penalties, attorney fees, and liquidated damages – "Due to Defendants' willful failure to  
10 pay wages," each plaintiff claims to be "entitled to liquidated damages in the amount of double [their]  
11 unpaid overtime." *See* Compl. ¶¶ 36, 42.

## 12 **B. Argument**

### 13 1. Defendant Michael Braxton is Not an "Employer" Subject to Potential Liability

14 Plaintiffs reference three statutes forming the bases for their claims for relief: ORS 652.200,  
15 ORS 653.261, and ORS 652.150. *See generally* Compl. ¶ 23-54. None of these statutes allow for the  
16 imposition of liability against a supervisor.

17 For chapter 653 of the Oregon Revised Statutes, an "employer" is defined as "any person who  
18 employs another person . . . ." ORS 653.010 (3). "Employ" means to "suffer or permit to work . . . ." ORS 653.010 (2). For Plaintiffs' claims under chapter 652 of the Oregon Revised Statutes, an  
19 "Employer" is "any person employing one or more employees . . . ." ORS 652.210 (2). "Employee"  
20 means any individual who . . . renders personal services wholly or partly in this state to an employer  
21 who pays or agrees to pay such an individual at a fixed rate." ORS 652.210 (1).

22 Plaintiffs plainly allege only that Braxton "supervised Plaintiffs' work" "at all material times . . .  
23 ." Compl. ¶ 5. Plaintiffs do not claim that Braxton "suffer[ed] or permit[ted]" them to work, or  
24 "agree[d] to pay" them for their "personal services . . . ." ORS 652.201 (2) and ORS 653.010 (2).  
25

Accordingly, Braxton cannot be subject to liability for any unpaid wages or attorney fees claimed by Plaintiffs.<sup>1</sup> Based on Plaintiffs own allegations, Braxton should be dismissed from this case.

2. Plaintiffs Cite No Statute Allowing Double Damages

The Complaint cites four statutes – ORS 652.200, ORS 653.261, ORS 652.150, and ORS 652.140. *See generally* Compl. ¶¶ 23-54. None of these statutes provide for the "liquidated damages" of "double . . . unpaid overtime" sought by Plaintiffs. *See* Compl. ¶¶ 36, 42. Specifically:

- ORS 652.200 allows for the recovery of "a reasonable sum of attorney fees at trial" in a successful action for unpaid wages. ORS 652.200 (2).

- ORS 653.261 allows for certain civil penalties that do not include liquidated damages payable to a plaintiff. *See* ORS 653.261 (4) (providing for the imposition of certain civil penalties under circumstances not present here).

- ORS 652.150 allows the imposition of waiting time penalties where "an employer willfully fails to pay any wages or compensation of any employee whose employment ceases" in the form of continued payment "from the due date thereof at the same hourly rate for eight hours per day," limited to "30 days from the due date." ORS 652.150 (1) and (1)(a).

- ORS 652.140 simply requires employers to pay wages upon the termination of an employee's employment. *See* ORS 652.140 (1) ("When an employer discharges an employee or when employment is terminated by mutual agreement, all wages earned and unpaid at the time of the

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<sup>1</sup> This contrasts with certain other statutes rendering individuals liable for an employer's wrongful actions. *See, e.g.*, ORS 659A.030 (1)(g) (making it an "unlawful employment practice" for "any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter . . .").

1 discharge or termination become due and payable not later than the end of the first business day after  
 2 the discharge or termination.").

3 None of these or any other statute applicable here entitle Plaintiffs to "liquidated damages in the  
 4 amount of double [their] unpaid overtime." Compl. ¶¶ 36, 42. These claims and the corresponding  
 5 relief sought in paragraphs 5 and 6 of the Complaint's Prayer for Relief should, therefore, be dismissed  
 6 from this action.

#### 7 **IV. CONCLUSION**

8 For the foregoing reasons, Defendants respectfully request the dismissal of (1) Braxton from this  
 9 case and (2) Plaintiffs' claims for liquidated damages for unpaid overtime.

10  
 11 September 5, 2018.

12 FARGEY LAW PC

13 By: /s/ Micah D. Fargey

14 Micah D. Fargey, OSB No. 096814  
 15 micah@fargeylaw.com

16 Attorneys for Defendants  
 17 **Empowerment Clinic Inc. and Michael Braxton**

**CERTIFICATE OF SERVICE**

I hereby certify that on September 6, 2018, I served the foregoing Defendants' Motion to Dismiss on the following individual(s):

Ms. Shemia Fagan  
SFagan@hkm.com  
HKM Employment Attorneys LLP  
1607 NE 41st Avenue  
Portland, OR 97232

by:

☒ Mailing a true copy/copies thereof, hereby certified by me as such, contained in a sealed envelope, with postage paid, addressed to the aforementioned individual(s) at their last known address as listed above and deposited in the post office in Portland, Oregon or Lake Oswego, Oregon on this day.

☐ Electronically mailing a copy/copies to the aforementioned individual(s) at their last known electronic address as listed above.

☐ Delivering or causing to be delivered true copy/copies thereof, certified by me as such, to the aforementioned individual(s), in person.

Dated September 6, 2018.

By: /s/ Micah D. Fargey  
Micah D. Fargey



IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

JAMAICA IMANI-NELSON, an individual;  
and JASON NELSON, an individual,

Plaintiffs,

v.

EMPOWERMENT CLINIC INC., an Oregon  
nonprofit corporation; and MICHAEL  
BRAXTON, an individual,

Defendants.

Case No. 18CV29761

**FIRST AMENDED COMPLAINT (ORS  
652.200 - Failure to Pay Wages; ORS  
653.261 - Failure to Pay Overtime Wages;  
ORS 652.150 - Failure to Pay Wages on  
Termination of Employment; Violations of  
the Fair Labor Standards Act (29 U.S.C.  
§201 et seq.))**

**PRAYER: \$327,850.00  
FEE AUTHORITY: ORS 21.160(1)(c)**

**NOT SUBJECT TO MANDATORY  
ARBITRATION**

For their first amended complaint against Defendants Empowerment Clinic Inc. (“ECI”) and Michael Braxton (“Braxton”), Plaintiffs Jamaica Imani-Nelson (“Ms. Imani-Nelson”) and Jason Nelson (“Mr. Nelson”) allege as follows:

**PARTIES/VENUE**

1.

Ms. Imani-Nelson is a resident of Portland, Multnomah County, Oregon.

2.

Mr. Nelson is a resident of Portland, Multnomah County, Oregon.

3.

Defendant ECI is an Oregon nonprofit corporation with its principal place of business in Portland, Multnomah County, Oregon. At all material times, Defendant ECI was an “employer” within the meaning of FLSA §3(d), 29 U.S.C. §203(d).

1 4.

2 Defendant Braxton is an individual residing in Portland, Washington County, Oregon.

3 5.

4 At all material times, Defendant Braxton supervised Plaintiffs' work, and was an  
 5 "employer" within the meaning of FLSA §3(d), 29 U.S.C. §203(d), in that he was a person  
 6 acting directly or indirectly in the interest of Defendant ECI in relation to its employees and had  
 7 economic and operational control over Defendant ECI in its business in the State of Oregon.  
 8 Defendant Braxton was in charge of directing Defendant ECI's employment practices, hiring and  
 9 firing employees, requiring employees to attend meetings, determining independent contractor  
 10 and intern status, and setting wages.

11 6.

12 At all material times, Plaintiffs were covered by the FLSA as employees of Defendant.  
 13 Defendants operate a residential care facility for individuals in recovery.

14 7.

15 Venue is appropriate in Multnomah County because Defendant ECI has an office for the  
 16 transaction of business in Multnomah County, conducts regular and sustained business activities  
 17 in Multnomah County, and much of the alleged wrongful conduct giving rise to the causes of  
 18 action in this case took place in Multnomah County.

19 **FACTS**

20 **Plaintiff Jason Nelson**

21 8.

22 Defendants hired Mr. Nelson on or about February 2016 as a Certified Recovery Mentor  
 23 and DUII Facilitator/Counselor. Mr. Nelson was not paid any compensation for his work from  
 24 February 2016 to September 2016 because Defendants erroneously classified him as an "intern."

25 ///

26 ///

1 9.

2 Mr. Nelson ran DUII groups, performed individual counseling and group counseling  
3 without any supervision. He also attended mandatory staff meetings.

4 10.

5 From February 2016 through September 2016, Mr. Nelson worked as a misclassified  
6 intern/trainee for the benefit of Defendants for an average of 70-80 hours per week. His work for  
7 Defendants was not educational and he performed the same work as paid workers for  
8 Defendants.

9 11.

10 Defendants owed Mr. Nelson \$17 per hour of regular work and \$25.50 for all hours he  
11 worked over 40 in a week. Defendants failed to pay Mr. Nelson any wages from February 2016  
12 through July 2017 due to his misclassification as an intern.

13 12.

14 On or about September 2016, Defendants hired Mr. Nelson as an alcohol and drug  
15 counselor and recovery mentor, but none of his duties changed from when he was classified as  
16 an intern/trainee.

17 13.

18 Mr. Nelson was misclassified as an independent contractor. Defendants required Mr.  
19 Nelson's attendance at mandatory staff meetings and weekly trainings, directed his work,  
20 purchased his business cards, provided and furnished his office at ECI, provided his equipment,  
21 inspected his work, and insured his work.

22 14.

23 From September 2016 through August 28, 2017, Mr. Nelson demonstrated a hard work  
24 ethic and worked for the benefit of Defendants for an average of 70-80 hours per week.

25 15.

26 Defendants owe Mr. Nelson Jason \$17 per hour of regular work and \$25.50 for all hours

1 worked over 40 in a week. Defendants did not pay Mr. Nelson all wages due for his hours, as  
2 required by the FLSA and Oregon law.

3 16.

4 As a result of his misclassification as an independent contractor, Mr. Nelson was  
5 underpaid for his regular hours and Defendants failed to pay overtime for hours he worked for  
6 Defendants' benefit in excess of 40 hours per week, as required by the FLSA and Oregon law.

7 **Plaintiff Jamaica Imani-Nelson**

8 17.

9 On or about June 16, 2016, Defendants hired Ms. Imani-Nelson as an as alcohol and drug  
10 counselor and recovery mentor. Defendants erroneously classified her as an independent  
11 contractor.

12 18.

13 Defendants paid wages to Ms. Imani-Nelson personally.

14 19.

15 Defendants required her attendance at mandatory staff meetings and weekly trainings,  
16 directed her work, purchased her business cards, provided and furnished her office at ECI,  
17 provided her equipment, inspected her work, and insured her work.

18 20.

19 From June 2016 through July 2, 2017, Ms. Imani-Nelson demonstrated a hard work ethic  
20 and worked for the benefit of Defendants for an average of 70-90 hours per week.

21 21.

22 Defendants owed Ms. Imani-Nelson \$18.50 per hour of regular work and \$27.75 for all  
23 hours worked over 40 in a week. Defendants did not pay Ms. Imani-Nelson all wages due for  
24 her hours, as required by the FLSA and Oregon law.

25 22.

26 As a result of her misclassification as an independent contractor, Ms. Imani-Nelson was

1 underpaid for her regular hours and Defendants failed to pay overtime for hours she worked for  
 2 Defendants' benefit in excess of 40 hours per week, as required by the FLSA and Oregon law.

3 23.

4 Plaintiffs' attorney sent a letter dated November 26, 2017 to Defendants' attorney Micah  
 5 Fargey, demanding wages and penalties owed and providing reasonable notice that Plaintiffs will  
 6 seeks costs and attorney fees for unpaid wages.

7 **FIRST CLAIM FOR RELIEF**  
 8 **(ORS 652.200 - Failure to Pay Wages)**  
 9 **(On behalf of Plaintiff Jason Nelson)**  
 10 **(Against all Defendants)**

11 24.

12 Mr. Nelson realleges and incorporates paragraphs 1 through 23 as though fully set forth  
 13 herein.

14 25.

15 Defendants willfully failed to compensate Mr. Nelson for all hours he worked for the  
 16 benefit of Defendants.

17 26.

18 On November 26, 2017, before filing this action, Mr. Nelson's attorney gave Defendants  
 19 reasonable written notice of Mr. Nelson's wage claim.

20 27.

21 Mr. Nelson requests payment of said wages and imposition of penalty wages on  
 22 Defendants for the maximum thirty (30) day period provided by ORS 652.150 in the amount of  
 23 \$4,400 or upon proof at the time of trial.

24 28.

25 Mr. Nelson is entitled to recover her costs and attorney fees pursuant to ORS 652.200.

26 ///

**SECOND CLAIM FOR RELIEF**  
**(ORS 652.200 - Failure to Pay Wages)**  
**(On behalf of Plaintiff Jamaica Imani-Nelson)**  
**(Against all Defendants)**

29.

Ms. Imani-Nelson realleges and incorporates paragraphs 1 through 28 as though fully set forth herein.

30.

Defendants willfully failed to compensate Ms. Imani-Nelson for all hours she worked for the benefit of Defendants.

31.

On November 26, 2017, before filing this action, Ms. Imani-Nelson's attorney gave Defendants reasonable written notice of Ms. Imani-Nelson's wage claim.

32.

Ms. Imani-Nelson requests payment of said wages and imposition of penalty wages on Defendants for the maximum thirty (30) day period provided by ORS 652.150 in the amount of \$4,400, or upon proof at the time of trial.

33.

Ms. Imani-Nelson is entitled to recover her costs and attorney fees pursuant to ORS 652.200.

**THIRD CLAIM FOR RELIEF**  
**(ORS 653.261 - Failure to Pay Overtime Wages)**  
**(On behalf of Plaintiff Jason Nelson)**  
**(Against all Defendants)**

34.

Mr. Nelson realleges and incorporates paragraphs 1 through 33 as though fully set forth

1 herein.

2 35.

3 In or about February 2016 through August 28, 2017, Mr. Nelson worked overtime hours  
4 for the benefit of Defendants.

5 36.

6 Defendants had actual and/or constructive knowledge of Mr. Nelson's overtime and  
7 willfully failed to pay him wages he was due.

8 37.

9 Due to Defendants' willful failure to pay wages, Mr. Nelson is entitled unpaid wages and  
10 penalties pursuant to Oregon law.

11 38.

12 On November 26, 2017, before filing this action, Mr. Nelson's attorney gave Defendants  
13 reasonable written notice of his wage claim.

14 39.

15 Mr. Nelson is entitled to recover his costs and attorney fees.

16 **FOURTH CLAIM FOR RELIEF**

17 **(ORS 653.261 - Failure to Pay Overtime Wages)**

18 **(On behalf of Plaintiff Jamaica Imani-Nelson)**

19 **(Against all Defendants)**

20 40.

21 Ms. Imani-Nelson realleges and incorporates paragraphs 1 through 39 as though fully set  
22 forth herein.

23 41.

24 On or about June 2016 through July 2, 2017 Ms. Imani-Nelson worked overtime hours  
25 for the benefit of Defendants.

26 ///

1 42.

2 Defendants had actual and/or constructive knowledge of Ms. Imani-Nelson's overtime  
3 and willfully failed to pay her wages she was due.

4 43.

5 Due to Defendants' willful failure to pay wages, Ms. Imani-Nelson is entitled to unpaid  
6 wages and penalties pursuant to Oregon law.

7 44.

8 On November 26, 2017, before filing this action, Ms. Imani-Nelson's attorney gave  
9 Defendants reasonable written notice of her wage claim.

10 45.

11 Ms. Imani-Nelson is entitled to recover her costs and attorney fees.

12 **FIFTH CLAIM FOR RELIEF**

13 **(ORS 652.150 - Failure to Pay Wages on Termination of Employment)**

14 **(On behalf of Plaintiff Jason Nelson)**

15 **(Against All Defendants)**

16 46.

17 Mr. Nelson realleges and incorporates paragraphs 1 through 45 as though fully set forth  
18 herein.

19 47.

20 Defendants terminated Mr. Nelson on August 28, 2017.

21 48.

22 Defendants willfully failed to pay Mr. Nelson all wages due and owing by the time  
23 required in ORS 652.140.

24 49.

25 On November 26, 2017, Mr. Nelson's attorney sent a letter to Defendants with an  
26 estimate of wages owed and/or sufficient facts for Defendants to determine what amount was



1 due.

2 50.

3 Defendants willfully failed to pay Mr. Nelson all wages due and owing within twelve  
4 (12) days of the written notice.

5 51.

6 On November 26, 2017, before filing this action, Mr. Nelson's attorney gave Defendants  
7 reasonable written notice of his wage claim.

8 52.

9 Mr. Nelson is entitled to recover his costs and attorney fees.

10 **SIXTH CLAIM FOR RELIEF**

11 **(ORS 652.150 - Failure to Pay Wages on Termination of Employment)**

12 **(On behalf of Plaintiff Jamaica Imani-Nelson)**

13 **(Against All Defendants)**

14 53.

15 Ms. Imani-Nelson realleges and incorporates paragraphs 1 through 52 as though fully set  
16 forth herein.

17 54.

18 Defendants terminated Ms. Imani-Nelson on September 28, 2017.

19 55.

20 Defendants willfully failed to pay Ms. Imani-Nelson all wages due and owing by the time  
21 required in ORS 652.140.

22 56.

23 On November 26, 2017, Ms. Imani-Nelson's attorney sent a letter to Defendants with an  
24 estimate of wages owed and/or sufficient facts for Defendants to determine what amount was  
25 due.

26 ///

1 57.

2 Defendants willfully failed to pay Ms. Imani-Nelson all wages due and owing within  
3 twelve (12) days of the written notice.

4 58.

5 On November 26, 2017, before filing this action, Ms. Imani-Nelson's attorney gave  
6 Defendants reasonable written notice of her wage claim.

7 59.

8 Ms. Imani-Nelson is entitled to recover her costs and attorney fees.

9 **SEVENTH CLAIM FOR RELIEF**

10 **(29 U.S.C. §216 - FLSA - Failure to Pay Wages)**

11 **(On behalf of Plaintiff Jason Nelson)**

12 **(Against All Defendants)**

13 60.

14 Mr. Nelson realleges and incorporates paragraphs 1 through 59 as though fully set forth  
15 herein.

16 61.

17 Defendants terminated Mr. Nelson on August 28, 2017.

18 62.

19 Defendant ECI is an Oregon residential care facility and is therefore covered under the  
20 FLSA.

21 63.

22 Defendant Braxton supervised Mr. Nelson's work, and was an "employer" within the  
23 meaning of FLSA §3(d), 29 U.S.C. §203(d), in that he was a person acting directly or indirectly  
24 in the interest of Defendant ECI in relation to its employees, and he was in charge of directing  
25 Defendant ECI's employment practices, hiring and firing employees, requiring employees to  
26 attend meetings, determining independent contractor and intern status, and setting wages.

64.

Defendants' actions were willful and/or showed a reckless disregard for the provisions of the FLSA. Defendants failed to compensate Mr. Nelson at both his overtime and regular rates for the time he spent counseling and mentoring, despite the fact that Defendants knew, or should have known, that compensation was due to Mr. Nelson.

65.

Due to Defendants' unlawful conduct, Mr. Nelson has lost wages and is owed in an amount to be determined by a jury at trial.

66.

Due to the willful and unlawful acts of Defendants, Mr. Nelson is also entitled to unpaid wages and liquidated damages in an amount equal to the award of wages.

67.

Mr. Nelson is entitled to recover his costs and attorney fees pursuant to 29 U.S.C. §216(b).

# **EIGHTH CLAIM FOR RELIEF**

**(29 U.S.C. §216 - FLSA - Failure to Pay Wages)**

**(On behalf of Plaintiff Jamaica Imani-Nelson)**

**(Against All Defendants)**

68.

Ms. Imani-Nelson realleges and incorporates paragraphs 1 through 67 as though fully set forth herein.

69.

Defendants terminated Ms. Imani-Nelson on September 28, 2017.

70.

Defendant ECI is an Oregon residential care facility and is therefore covered under the FLSA.

71.

Defendants' actions were willful and/or showed a reckless disregard for the provisions of the FLSA. Defendants failed to compensate Ms. Imani-Nelson at both her overtime and regular rates for the time she spent counseling and mentoring, despite the fact that Defendants knew, or should have known, that compensation was due to Ms. Imani-Nelson.

72.

Due to Defendants' unlawful conduct, Ms. Imani-Nelson has lost wages and is owed in an amount to be determined by a jury at trial.

73.

Due to the willful and unlawful acts of Defendants, Ms. Imani-Nelson is also entitled to unpaid wages and liquidated damages in an amount equal to the award of wages.

74.

Ms. Imani-Nelson is entitled to recover her costs and attorney fees pursuant to 29 U.S.C. §216(b).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request the court to:

1. Assume jurisdiction over each of the causes set forth herein.
2. Issue a declaration that Defendants have violated Plaintiffs' legally protected rights and an order requiring Defendants to correct this deficiency.
3. Grant a permanent injunction enjoining Defendants, their owners, officers, management personnel, employees, agents, successors, and assigns, and all persons in active concert or participation with Defendants, from engaging in any employment practice which retaliates against employees who request were exercised or legally protected rights.
4. Order Defendants to create, implement and carry out policies, practices and programs providing for equal employment opportunities which affirmatively eradicate the effects of past and present unlawful employment practices, on such terms as the court may direct.

- 1 5. For Mr. Nelson's Claims for Relief, order Defendants to make him whole by  
2 compensating him \$23,800 for unpaid wages, \$38,760 for unpaid overtime, \$62,560 for  
3 liquidated damages, and \$4,080 for late payment penalties and other relief as provided by  
4 law.
- 5 6. For Ms. Imani-Nelson's Claims for Relief, order Defendants to make her whole by  
6 compensating her \$97,125 for unpaid overtime, \$97,125 for liquidated damages, and  
7 \$4,400 for late payment penalties, and other relief as provided by law.
- 8 7. Award Plaintiffs their costs of suit and reasonable attorney fees, costs and expert witness  
9 fees.
- 10 8. Order Defendants to pay prejudgment and post judgment interest, as appropriate, on all  
11 amounts due to Plaintiffs as a result of this action.

12  
13 DATED: October 9, 2018.

14 **HKM EMPLOYMENT ATTORNEYS LLP**

15  
16 By: s/ Shemia Fagan

17 Shemia Fagan, OSB No. 093476

18 Email: sfagan@hkm.com

19 Tel: 503-400-7423; Fax: 503-345-0806

20 Attorneys for Plaintiffs Jamaica Imani-Nelson  
21 and Jason Nelson  
22  
23  
24  
25  
26

**CERTIFICATE OF SERVICE**

I hereby certify that on October 9, 2018 the foregoing was filed with the Clerk of the Court via the Odyssey File & Serve system which will send notification of such filing to the following:

Micah D. Fargey  
micah@fargeylaw.com  
Fargey Law PC  
7307 SW Beveland Street, Suite 200  
Portland, OR 97223  
Telephone: 503-946-9426  
Facsimile: 503-342-8332

Attorneys for Defendants

and by ☒ mailing; ☒ e-mailing; ☐ hand delivery; ☐ facsimile a true and correct copy thereof to said parties on the date stated below.

DATED: October 9, 2018.

s/ Margurite Teresa Weeks

Margurite Teresa Weeks, Legal Assistant  
HKM Employment Attorneys LLP